

Baker & Hostetler LLP  
45 Rockefeller Plaza  
New York, New York 10111  
Telephone: (212) 589-4200  
Facsimile: (212) 589-4201  
David J. Sheehan  
Email: [dsheehan@bakerlaw.com](mailto:dsheehan@bakerlaw.com)

Hearing Date: TBD  
Objection Deadline: September 12, 2014

*Attorneys for Irving H. Picard, Trustee  
for the Substantively Consolidated SIPA Liquidation  
of Bernard L. Madoff Investment Securities LLC  
and the Estate of Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:  
BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation of  
Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

J. EZRA MERKIN, GABRIEL CAPITAL, L.P.,  
ARIEL FUND LTD., ASCOT PARTNERS, L.P.,  
ASCOT FUND LTD., GABRIEL CAPITAL  
CORPORATION,

Defendants.

SIPA LIQUIDATION

No. 08-01789 (SMB)

(Substantively Consolidated)

Adv. Pro. No. 09-1182 (SMB)

**NOTICE OF TRUSTEE'S MOTION TO DIRECT ENTRY OF FINAL JUDGMENT  
UNDER FEDERAL RULE OF CIVIL PROCEDURE 54(b) AND TO CERTIFY  
JUDGMENT FOR IMMEDIATE APPEAL UNDER 28 U.S.C. § 158(d)**

**PLEASE TAKE NOTICE** that, upon the accompanying memorandum of law, and upon all prior pleadings and proceedings herein, the undersigned, counsel to plaintiff Irving H. Picard, as trustee for the substantively consolidated liquidation of the business of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act (“SIPA”), 15 U.S.C. § 78aaa *et seq.*, and the estate of Bernard L. Madoff (“Madoff”), respectfully moves this Court to: (i) direct entry of final judgment against Defendants Gabriel Capital, L.P., Ariel Fund Ltd., and Ascot Partners, L.P. under Federal Rule of Civil Procedure 54(b) (the “Rule 54(b) Judgment”), made applicable to this proceeding by Federal Rule of Bankruptcy Procedure 7054, on Counts One and Three through Eight of the Trustee’s Third Amended Complaint in the matter of *Picard v. Merkin, et al.*, No. 09-1182 (SMB); (ii) expressly determine that there is no just reason for delay; and (iii) certify the Rule 54(b) Judgment for an immediate appeal to the United States Court of Appeals for the Second Circuit under 28 U.S.C. § 158(d), as set forth in the proposed order attached hereto as Exhibit A.

**PLEASE TAKE FURTHER NOTICE** that in accordance with Federal Rule of Bankruptcy Procedure 8001(f)(3)(C)(v), attached hereto as Exhibit B is this Court’s Memorandum Decision Granting in Part and Denying in Part Defendants’ Motion to Dismiss issued in *Picard v. Merkin*, Adv. Pro No. 09-1182 (SMB), dated August 12, 2014.

**PLEASE TAKE FURTHER NOTICE** that written objections to the Motion must be filed with the Clerk of the United States Bankruptcy Court, the Alexander Hamilton Customs House, One Bowling Green, New York, New York 10004 by no later than **4:00 p.m., on September 12, 2014** (with a courtesy copy delivered to the Chambers of the Honorable Stuart M. Bernstein) and must be served upon (a) Baker & Hostetler, LLP, counsel for the Trustee, 45 Rockefeller Plaza, New York, New York 10111, Attn: David J. Sheehan, Esq. and (b) the

Securities Investor Protection Corporation, 805 Fifteenth Street, NW, Suite 800, Washington, DC 20005, Attn: Kevin H. Bell, Esq., so as to be received on or before September 12, 2014.

**PLEASE TAKE FURTHER NOTICE** that the previously-scheduled hearing for this Motion on October 22, 2014, at 10:00 a.m., to be held before the Honorable Stuart M. Bernstein, United States Bankruptcy Judge, at the United States Bankruptcy Court, the Alexander Hamilton Customs House, One Bowling Green, New York, New York 10004, has been adjourned *sine die*. The hearing date for this Motion will be determined by the Court.

Dated: September 5, 2014  
New York, New York

/s/ David J. Sheehan

Baker & Hostetler LLP  
45 Rockefeller Plaza  
New York, New York 10111  
Telephone: (212) 589-4200  
Facsimile: (212) 589-4201  
David J. Sheehan  
Email: dsheehan@bakerlaw.com  
Lan Hoang  
Email: lhoang@bakerlaw.com  
Brian W. Song  
Email: bsong@bakerlaw.com  
Seanna R. Brown  
Email: sbrown@bakerlaw.com

*Attorneys for Irving H. Picard, Trustee for the  
Substantively Consolidated SIPA Liquidation  
of Bernard L. Madoff Investment Securities  
LLC and the Estate of Bernard L. Madoff*